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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAHNQUIS JEMERSON,

Defendant and Appellant.

B222879

(Los Angeles County
Super. Ct. No. BA364855)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William C. Ryan, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Jahnquis Jemerson appeals from the judgment entered following his plea of no contest to possession of marijuana for sale (Health & Saf. Code, § 11359), transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) and possession for sale of a controlled substance (Health & Saf. Code, § 11378). The trial court granted Jemerson three years probation. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

At approximately 9:50 p.m. on November 17, 2009, Los Angeles Police Officer Robert Olmos and his partner were on patrol in an unmarked car near 84th Place and Broadway. The officers were driving at approximately 15 miles per hour when Olmos saw Jemerson standing next to a black Pontiac. As Jemerson opened the door to get into the driver's seat, Olmos detected "a strong odor of marijuana emitting from the car." Olmos decided to investigate. He got out of his car and as he approached Jemerson's car he saw on the front floorboard "a Ziploc baggie containing [more] Ziploc baggies that had a green leafy substance that resembled marijuana [inside], and there was an additional bag within the bag that [contained] tablets that were consistent with ecstasy pills."

Olmos asked Jemerson to move to the rear of the car so that he could conduct a narcotics investigation. When he was able to look more closely, Olmos noted that there were "three smaller individually packaged bags of marijuana and an additional one that contained the ecstasy pills."² Olmos asked Jemerson if he smoked and Jemerson indicated that he had smoked some marijuana. It was then that Olmos noted that

¹ The facts have been taken from the transcripts of the preliminary hearing and the motion to suppress evidence.

² At the preliminary hearing, it was stipulated that "item 1 . . . contained a plastic baggy with three plastic bindles of 3.36 net grams of marijuana, and item 2 contained two gray tablets with an alien logo with .49 net grams of MDMA and one green tablet with a bunny logo of .24 net grams of MDMA[.]"

Jemerson had red eyes, a dry mouth, was jittery and was sweating. Jemerson admitted that, in addition to smoking it, he sold \$5 bags of marijuana.

In response to Olmos's question, Jemerson indicated that he was on formal probation. Olmos then informed Jemerson that he intended to perform a "probation compliance" search of Jemerson's residence. Jemerson gave to Olmos an address on West 55th Street and the officer and his partner, with Jemerson in custody, went to that location. On the way to the West 55th Street location, Jemerson voluntarily told the officers that they might find more marijuana in a dresser drawer in his bedroom. Jemerson was concerned about having the officers go to his residence. He indicated that he did not want his family to be involved in his case.

When the officers arrived at the address on West 55th Street, a young woman who told the officers she was Jemerson's girlfriend answered the door and allowed them to enter. When the officers failed to find any additional marijuana in the room occupied by Jemerson, his girlfriend indicated she had taken a black bag from the dresser drawer and placed it in a kitchen cabinet. Olmos retrieved the bag from the cabinet and determined that it contained "13 small Ziploc baggies[,] each containing marijuana[,] and . . . four additional tablets with stamps that resembled ecstasy." In addition to the narcotics, the officers found packaging material in the form of Ziploc baggies. The officers did not find any paraphernalia indicating Jemerson possessed the drugs for personal use.

2. Procedural history.

Following a preliminary hearing, on December 18, 2009 Jemerson was charged by information with possession of marijuana for sale in violation of Health and Safety Code section 11359 (Count 1), transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a) (Count 2), and possession for sale of a controlled substance in violation of Health and Safety Code section 11378 (Count 3).

Jemerson's counsel made a motion to dismiss the matter, asserting there was no evidence to indicate he was involved in the sale of the marijuana or ecstasy other than the police officer's testimony. There was no currency and there were no "pay/owe sheets" or "scales." Moreover, counsel for Jemerson argued that his statements made in the car on

the way to his residence “should be excluded under the Fifth Amendment given that Mr. Jemerson was in custody [and] . . . had not been read his rights.” The trial court denied the motion, indicating that since Jemerson had not presented any evidence to the contrary, the court was going to consider the comments made in the car as spontaneous statements.

Counsel for Jemerson also made a motion to suppress the marijuana and ecstasy discovered by Officer Olmos on the floorboard of the car when the officer first encountered Jemerson. The trial court denied the motion. The court determined that the officer had “not been impeached, and what he testified to [was] that he smelled the odor of burnt marijuana. . . . [That was] enough for him to investigate.”

At proceedings on February 24, 2010, counsel for Jemerson made a *Pitchess*³ motion arguing, not “that none of what happened in the police report took place, but . . . that the officers lied about two things[:] [(1)] [Jemerson’s] statement that he sold drugs and [(2)] that the residence that they searched was his actual residence.” Relying on a number of California cases, the trial court denied the motion.

After denial of his *Pitchess* motion, Jemerson informed the trial court that he wished to “accept the [c]ourt’s indicated” sentence and enter a plea. The trial court responded: “My indicated was, if he wishes to plead, he’s got to plead open to [all three] counts, two years suspended, a year in the county jail, and that will include a [probation violation].” “The [c]ourt would retain the case for purposes of the grant of probation.”

Jemerson waived his right to a court or jury trial, his right to confront and cross-examine the witnesses against him, his right to subpoena witnesses and present a defense and his privilege against self-incrimination. He then pleaded no contest to each of the three counts; possession of marijuana for sale, transportation of a controlled substance and possession for sale of a controlled substance. As to his probation, Jemerson admitted he was in violation of its terms and conditions.

³ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

The trial court sentenced Jemerson to two years in prison for his conviction of the transportation of ecstasy in violation of Health and Safety Code section 11379 as alleged in count 2. For his conviction of possession of marijuana for sale in violation of Health and Safety Code section 11359, as alleged in count 1, the trial court imposed the middle term of two years in state prison, the term to run concurrently with that imposed for count 2. As to his conviction of count 3, possession for sale of ecstasy in violation of Health and Safety Code section 11378, the court selected the low term of three years in prison, then suspended its execution. The trial court granted Jemerson three years probation on the condition that he serve 365 days in county jail. Jemerson was awarded presentence custody credit for 100 days actually served and 100 days of good time/work time. The trial court ordered Jemerson to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a stayed \$200 probation revocation restitution fine (Pen. Code, § 1202.44), a criminal conviction assessment of \$90 (Gov. Code, § 70373), a \$90 court security assessment (Pen. Code, § 1465.8, subd. (a)(1)), and a \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5).

With regard to his probation revocation, the trial court stated: “[T]he condition is to obey all laws and [probation is] revoke[d] and reinstate[d] on that condition. The defendant is to serve 200 days in the county jail, forthwith, consecutive, credit for 100 plus 100.”

Jemerson filed a timely notice of appeal on February 26, 2010.

This court appointed counsel to represent Jemerson on appeal on April 6, 2010.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed May 12, 2010, the clerk of this court advised Jemerson to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.